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ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 30th August 1958/Bhadra 8, 1880 (Saka)

S.O. 1824.—In pursuance of the provisions of sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 and in continuation of its notification No. 82/479/57/7884 dated the 5th June, 1958, published in the Gazette of India Extraordinary, Part II-Section 3(ii) (No. 100) dated the 7th June, 1958, the Election Commission hereby publishes the judgment and Order of the Court of the Judicial Commissioner, Himachal Pradesh, delivered on the 31st July, 1958, on the appeal filed by Shri Y. S. Parmar against the Order dated the 28th April, 1958 of the Election Tribunal, Nahan, in election petition No. 479 of 1957.

IN THE COURT OF THE JUDICIAL COMMISSIONER, HIMACHAL PRADESH AT
SIMLA

CIVIL APPEAL SIDE

CIVIL MISCELLANEOUS FIRST APPEAL NO. 2 OF 1958.

PRESENT

Sarvasri K. L. Misra, S. S. Shukla, J. K. Srivastava, M. G. Poddar and M. L. Aukta, Advocates for the appellant, Dr. Y. S. Parmar.

Sarvasri M. L. Kalia and Ishwar Chandra Advocates for respondent No. 1, Shri Hira Singh Pal.

Appeal from the order of the Election Tribunal, Himachal Pradesh, dated 28-4-1958.

Dr. Y. S. Parmar—Appellant.

Versus.

Shri Hira Singh Pal & another—Respondents.

JUDGMENT

Ramabhadran, J. C.—This is an appeal under section 116A of the Representation of the People Act, 1951, by Dr. Y. S. Parmar, against the decision of the Election Tribunal, Himachal Pradesh, declaring his election to the Lok Sabha, from the Mahasu constituency, as void.

The appeal arises under the following circumstances:—The election to the Lok Sabha from the double-member Mahasu Parliamentary constituency took place between the 25th of May and 6th of June, 1957. One of the two seats was a general seat and the other was a reserved seat. Nomination papers were filed by ten candidates, including the parties to this appeal. Two of the candidates withdrew and, therefore, the ultimate contest was between eight candidates, including the parties to this appeal. The appellant, Dr. Y. S. Parmar and Shri Nek Ram were declared successful from the general and reserved seats, respectively.

There was no dispute regarding the election of the latter. The election of Dr. Y. S. Parmar was, however, challenged by an unsuccessful candidate, Shri Hira Singh Pal, by means of an election petition under section 80 of the Representation of the People Act, 1951 (which, hereafter, will be referred to as "the Act"). The petition was referred to an Election Tribunal, consisting of a single member, Shri S. D. Khare. At the conclusion of the trial of the petition, the Tribunal held that Dr. Y. S. Parmar had committed a corrupt practice as contemplated by S. 123(7) of the Act and, accordingly, under section 100(1)(b), it declared his election to be void. It is against this decision that Dr. Y. S. Parmar has come up in appeal under section 116A of the Act.

The election of Dr. Y. S. Parmar was challenged by Shri H. S. Pal (respondent No. 1) on the following grounds:—(a) With a view to exercise undue influence over the electorate, Dr. Parmar issued hand-bills, bearing the photograph of, and an appeal by, Pt. J. L. Nehru. The hand-bills bore the caption "Vote for Dr. Y. S. Parmar." (b) Similarly, Dr. Parmar invited to Nahan, the Maharaja of Patiala, Sardar Pratap Singh Kairon, Chief Minister, Punjab, and Sarvasri Abid Ali and M. M. Shah, Ministers of the Union Government, to influence the Sikh and Muslim voters and the employees of the Nahan Foundry Ltd., respectively. (c) At the instance of Dr. Parmar, Mr. Gaur, Conservator of Forests, Nahan, threw open the jungles, near villages Ajoli, Baliwala and Kishankote, so that the villagers could graze their cattle there. In this way, they were persuaded to vote for Dr. Parmar. (d) One Satya Pal of Nahan was bribed at the instance of Dr. Parmar at the Rajna Polling Station on 2-6-1957. (e) One Mohd. Rehman and his father, Mohd. Ramzan, worked for Dr. Parmar during the election period, on the understanding that the former would be employed as Secretary, Nahan Municipality. (f) Counterfeit notes were got printed and distributed among illiterate voters in Surajpur and Kanuwala, in Paonta and Nahan tehsils, in an attempt to win their votes for Dr. Parmar. (g) Dr. Parmar procured and obtained the assistance of Government servants, for the furtherance of his election prospects. One Amar Singh of Sheopur, Tehsil Paonta, a member of the Armed Forces of the Union, worked and canvassed for Dr. Parmar in villages Sheopur, Kanuwala and Haripur. He was also appointed as polling-agent for Dr. Parmar at the polling station Sheopur No. 13 on 25-5-1957. He worked in that capacity for some time. (h) Sumer Chand and Surat Ram, lambardars, also canvassed for Dr. Parmar and they were also appointed as polling-agents at Purnwala, Kanshipur and Tandyula, respectively. (i) Various provisions of the Act and the Rules, framed thereunder, were infringed thereby materially affecting the result of the election. For instance, although polling stations Nos. 433, 416, 83, 247 and 46 were to be located at villages Jonli, Katari, Siasu, Bambira and Ganog, respectively nevertheless, polling took place at Sungri instead of Jonli, Ghansni instead of Katari, and Sarog instead of Siasu. It was further alleged that the polling booths were also changed at the last minute and many voters were unable, consequently, to cast their votes. (j) One Soran, son of Rulia of village Deoni, Tehsil Nahan, impersonated for his father at polling station No. 29 on 28-5-1957. Similarly, one Mela Ram impersonated for one Kanshi Ram at polling station No. 102 (Naura) on 8-6-1957. (k) Contrary to the usual practice, ballot boxes for the Parliamentary Constituency were placed in the front booth, while those for Territorial Council constituencies were placed in the rear booths. According to the petitioner, this was done by the election staff, at the instance of Dr. Parmar, with a view to help him. Several ballot papers for Mahasu constituency were reported lost, but no notification in this behalf was issued. One ballot box for polling station No. 554 contained the symbol of Dr. Parmar on the outside, while inside, it contained the symbol of another candidate, Shri S. D. Bushahri. A match-box and a stone were recovered from one of the ballot boxes which, according to the petitioner, was clear proof that they had been tampered with. (l) The account of election expenses, submitted by Dr. Parmar, was incorrect in as much as the expenditure, incurred by him over the visits of Union and States Ministers and the Maharaja of Patiala and over his polling agents and camps had not been included therein.

The petition was resisted by Dr. Parmar, who totally denied that any corrupt practice had been committed by him, or with his consent. According to him, the hand-bills, bearing the photograph of, and the appeal by, Pt. J. L. Nehru, were distributed by Congress Party in connection with his election. The visits of the Maharaja of Patiala, Sardar P. S. Kairon, Sarvasri M. M. Shah and Abid Ali, to the constituency, on the eve of election, were not denied. His contention, however, was that they had come in response to the request made by the Congress Party. Dr. Parmar stoutly denied that he had procured or obtained the assistance of any Government servant, in connection with his election. As regards the alleged appointment of Amar Singh, as polling agent at Sheopur No. 13, on 25-5-1957, he pleaded that Amar Singh was not his polling-agent "either in law or in fact." He further denied that the provisions of the Act and the Rules thereunder had been infringed by him or that there had been any impersonation. He also denied that the election staff had improperly helped him in any manner. He maintained that the account of election expenses, filed by him was correct.

Out of the pleadings of the parties as many as 18 issues were framed by the Tribunal, which are reproduced below:—

Issue No. 1

- (a) Whether posters bearing the photo of Shri Jawahar Lal Nehru under the heading "Vote for Dr. Parmar" were circulated throughout the constituency?

- (b) Whether Sri M. M. Shah, Union Minister for Industries, as such exhorted the workers and the employees of the Nahan Foundry Ltd. to vote and work for respondent No. 1?
- (c) (i) Whether the respondent No. 1 arranged a presentation of guard of honour, by the Himachal Pradesh Police on 23rd May, 1957, to Maharaja of Patiala at Paonta and whether it was given out on that occasion, that he represented the Government?
- (ii) If so, whether it was done to influence the police and other Government servants?
- (iii) Whether on that occasion the Maharaja of Patiala exhorted the Sikhs, in the name of religion, to vote for respondent No. 1?
- (d) (i) Whether Shri Pratap Singh Kairon, Chief Minister of Punjab told the audience, during his visit to Solan that the area would remain undeveloped, in case the people did not vote for the Congress candidate?
- (ii) Whether Shri Pratap Singh Kairon exhorted the Sikh voters, in the name of religion, to vote for Congress?
- (e) (i) Whether Shri Abid Ali, a Minister in the Central Government, was invited by respondent No. 1 and the Congress party, to canvass specially amongst the Muslim voters?
- (ii) Whether Shri Abid Ali told the Muslim voters at Misawala, in the mosque, on or about the 24th May, 1957, that unless they voted for respondent No. 1, they would meet the same fate, which they had met in the communal disturbances of 1947?
- (f) (i) Whether Shri Gaur, Conservator of Forests, declared the forest near village Ajoli, Baliwala and Kishankote open for grazing the cattle?
- (ii) If so, was that done at the instance of respondent, No. 1, in order to influence the voters of that area to vote for him?

Issue No. 2.—Whether one or more of the instances, mentioned under Issues 1 (a) to 1 (f) (ii) amount to the corrupt practice of “undue influence” as defined in sub-section 2 of section 123 of the Representation of the People Act?

Issue No. 3.—In case, the instances mentioned in issues (c) (iii), (d) (ii) and (e) (ii) of Issue No. 1 are proved, what is their further effect, if any?

Issue No. 4.—Whether notes of various denominations were printed and distributed by respondent No. 1 or with his active connivance, and people were told that in lieu of those notes, they should cast their votes in favour of respondent No. 1?

Issue No. 5.—Whether a promise was made to Mohd. Rehman by respondent No. 1, or with his consent or connivance, that he would be employed in the service of Nahan Municipality as its secretary, so that he may work for respondent No. 1?

Issue No. 6.—Whether Babu Ram and Jagannath of Dadahu gave a bribe to Satyapal of Nahan on 2nd June, 1957, with the consent of respondent No. 1, as alleged?

Issue No. 7 (i)—Whether any of the instances mentioned under Issues (4) to (6) amounts to ‘bribery’ as defined in sub-section (1) of section 123 of the Representation of the People Act?

(ii) Whether the result of election, so far as respondent No. 1 is concerned, has been materially affected on that account?

Issue No. 8 (i).—Whether Amar Singh of Sheopur worked and canvassed for respondent No. 1 in villages Sheopur, Kanwala and Haripur as alleged?

(ii) Whether Amar Singh was appointed as polling agent by respondent No. 1, for polling station Sheopur No. 13, on 25th May, 1957?

Issue No. 9.—Whether Shri Gaur, a Conservator of Forest, at the instance of respondent No. 1, declared the forest, near villages Ajoli, Baliwala and Kishankote open for grazing the cattle and thus worked for respondent No. 1?

- Issue No. 10 (i).*—Whether Sumar Chand and Sunat Ram were lambardars as alleged?
- (ii) If so, whether the aforesaid persons were appointed polling agents of respondent No. 1 at polling stations Nos. 4 and 6?
- (iii) Whether lambardars are Government servants, within the meaning of sub-section (7) of section 123 of the Representation of the People Act?
- Issue No. 11.*—In case one or more of Issues Nos. (8) to (10) is or are, decided in the affirmative, whether the respondent No. 1 obtained, procured or abetted or attempted to obtain, procure, by himself, by his agents and by his supporters, the assistance of the Government servants as specified under the said issues, for the furtherance of the prospects of his election?
- Issue No. 12 (i).*—Whether there was unauthorised change of the places of polling stations, as alleged in clauses (i) to (v) of para 4(d) of the petition?
- (ii) Whether the result of the election, so far as it concerns respondent No. 1, was materially affected on that account?
- Issue No. 13 (i).*—Whether Soran and Mela Ram impersonated and cast votes for others, as alleged?
- (ii) Was that done at the instance of respondent No. 1 and did it materially affect the result of the election, so far as respondent No. 1 is concerned?
- Issue No. 14.*—Whether there was non-observance of rules on the part of election staff, as alleged in clauses (i) to (iii) of sub-para (f) of para 4 of the petition. If so, was that done at the instigation of respondent No. 1 and did it materially affect the result of the election, so far as respondent No. 1 was concerned?
- Issue No. 15 (i).*—Whether the ballot boxes were tampered with, as alleged?
- (ii) If so, its effect?
- Issue No. 16 (i).*—Whether respondent No. 1 has spent more than the prescribed limit, as alleged in clauses (i) and (iv) to sub-para (h) of para 4 of the petition, in contravention of section 77 of the Representation of the People Act?
- (ii) If so, its effect?
- Issue No. 17 (i).*—Whether respondent No. 1 gave specific direction to his workers, supporters and agents and that they must not be a party to any corrupt or illegal practice?
- (ii) If so, whether corrupt practice or illegality committed, if any was without his sanction and contrary to his directions?
- Issue No. 18.*—To what relief, if any, is the petitioner entitled?

On Issue No. 1, the Tribunal, while finding that the posters bearing the photograph of Pt. J. L. Nehru under the caption "Vote for Dr. Y. S. Parmar" had been circulated in the constituency, decided all the remaining portions of that issue in the negative. Similarly, Issues 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16 and 17 were decided in the negative. On Issues No. 8 (i) and (ii), however, the Tribunal held (1) that Amar Singh did canvass and work for Dr. Parmar in villages Sheopur, Kanuwala and Haripur and (2) that Amar Singh, a member of the Armed Forces of the Union, was appointed by Dr. Parmar, to act as his polling-agent, at polling station Sheopur No. 13 on 25th May, 1957. Issue No. 11 was, accordingly, also decided in the affirmative. Consequently, under Issue No. 18, the Tribunal held that Dr. Parmar had committed a corrupt practice, as referred to in S. 100 (1) (b), read with section 123 (7) of the Act. Accordingly, Dr. Parmar's election was declared void under section 98, read with section 100 of the Act.

Hence, this appeal by Dr. Parmar. Arguments of the learned counsel for the parties were heard at great length on the 8th, 9th, 10th and 18th instant. Learned counsel for Shri Ugra Singh Pal (Petitioner-respondent) made a statement, as recorded on the order-sheet, on 9th July, 1958, to the effect that he would not challenge the findings of the Tribunal on Issues Nos. 1 (c) (i), 1 (c) (ii), 1 (f) (i), 1 (f) (ii), Issue No. 4, Issue No. 6, Issue No. 9, Issue No. 10 (i), 10 (ii), and 10 (iii), Issue No. 13 (i) and 13 (ii). He, however, supported the decision of the Tribunal, not only on the strength of the issues decided in his favour, but also urged that other issues, which had been decided against him (barring the ones given up by him here) should also have been decided in his favour.

It would be convenient, in my opinion, to take up the issues in serial order and give my findings thereupon.

FINDINGS

Issue No. 1(a).—The Tribunal has found that such posters were circulated in the constituency. Copies of those posters are on the record (Exs. 1 and 2). Whether this would amount to practising undue influence will be considered while discussing Issue No. 2.

Issue No. 1(b).—The Tribunal has found that while Shri M. M. Shah, Union Minister for Industries, did visit Nahan on 20th May, 1957, for electioneering purposes, nevertheless, he did not exhort the employees of the Nahan Foundry to vote for Dr. Parmar. Mr. Kalia for respondent No. 1 (Shri Hira Singh Pal) took me through the statements of Shib Ram (P.W. 22) and Shri Muni Lal, M.L.A. (P.W. 29). While the former supported the petitioner's case, the latter, who is an M.L.A. in the Punjab, contradicted the former by stating that Shri Shah merely called upon the audience to vote for the Congress as it was for their good. No special appeal was made to the Foundry workers. Two witnesses, namely M/s. Ramesh Joshi and Mahesh Bhardwaj were produced in rebuttal by Dr. Parmar. The Tribunal has found that the demands of the Nahan Foundry workers had been met before Shri Shah's visit to that place. Under these circumstances, I see no reason to differ from the finding of the Tribunal on this issue.

Issues No. 1(c) (i) and 1(c) (ii).—These two issues have been given up by Mr. Kalia and, therefore, they need not be discussed.

Issue No. 1(c) (iii).—The case of the petitioner-respondent was that at a public meeting at Paonta held on 23rd May, 1957, the Maharaja of Patiala called upon the Sikhs to vote for Dr. Parmar in the name of religion. The Tribunal has decided this issue in the negative, as, in his opinion, the petitioner's evidence on this point was inconsistent. Mr. Kalia took me through the relevant evidence on the record. I see no reason, however, to differ from the finding of the Tribunal on this issue.

Issue No. 1(d) (i).—In the opinion of the Tribunal, the petitioner failed to prove his allegation that Shri Pratap Singh Kairon told the audience at a public meeting at Solan, that, unless they voted for the Congress candidate, the area would remain undeveloped. The Tribunal had the advantage of seeing the solitary witness on this point, Shri N. C. Pal (P.W. 24), and noting his demeanour. I, therefore, see no reason to differ from its finding.

Issue No. 1(d) (ii).—Here again, the Tribunal has found that the evidence, produced by the petitioner, was not convincing and, therefore, it was not established that, at Paonta, Sardar Kairon exhorted the Sikhs, to vote for Parmar, in the name of religion. From the statement of Shri Muni Lal, M.L.A. (P.W. 29), it would appear that Sardar Kairon appealed to the public to vote for Dr. Parmar because it was for their good to vote for the Congress. I agree, under the circumstances, that the issue was rightly decided in the negative.

Issues No. 1(e) (i) and 1(e) (h).—The visit of Shri Abid Ali to village Misarwala, on the day in question, was not disputed. There was, however, no proof that he came there at the instance of Dr. Parmar. The latter's case was that Shri Abid Ali came there at the invitation of the Congress Party. I would, therefore, uphold the finding of the Tribunal on the first part of this issue. Coming to the second part, it was urged by Mr. Kalia, that it was immaterial whether the meeting was held inside the mosque or outside it. The Tribunal, which the advantage of listening to the witnesses, was not favourably impressed by the evidence produced by the petitioner on this issue. Sitting in appeal, I find it difficult to take a different view.

Issues No. 1(f) (i) and 1(f) (ii).—Since these issues have been given up by Mr. Kalia, no further comments are necessary.

Issue No. 2.—On this Issue, the Tribunal has held that the distribution of the posters, Exts. 1 and 2, and the visits of the Maharaja of Patiala, Sardar Kairon, Sarvasri Shah and Abid Ali would not amount to "undue influence", as contemplated by section 123(2) of the Act. The Tribunal has referred to the case, reported in *Linge Gowda v. Shivananjappa*, Volume VI Election Law Reports 288, wherein it was held; by the Election Tribunal, Bangalore:—

"A leader of a political party is entitled to declare to the public the policy of the party, and ask the electorate to vote for his party, without interfering with any electoral right and such declarations, on his part would not amount to undue influence under section 123(2). The fact that he happens to be a Minister or Chief Minister of the State would not deprive him of this right."

Issue No. 2, therefore, in my opinion was rightly decided in the negative.

Issue No. 3.—Since Issues 1(c) (iii), 1(d) (ii) and 1(e) (ii) have been held to have been rightly decided in the negative by the Tribunal, it follows that this issue also was rightly held as not arising.

Issue No. 4.—This was decided in the negative by the Tribunal. The issue has been given up here. Consequently, it need not detain us.

Issue No. 5.—The Tribunal decided this issue in the negative, pointing out that on the testimony of Harichand (P.W. 8), Secretary, Municipal Committee, Nahan, Mohd. Rehman, son of Mohd. Ramzan, was employed as a D.D.T. Supervisor by the Civil Surgeon, Nahan, in June, 1957, and Dr. Parmar had no hand in that appointment. I see no reason to differ from that finding. Consequently, that finding must be maintained.

Issue No. 6.—This was decided in the negative by the Tribunal. Mr. Kalia has given up this issue here. Consequently, we are no more concerned with it.

Issues No. 7 (i) and 7 (ii).—Issues 4 and 6 have been given up by Mr. Kalia here. On issue No. 5, I have maintained the finding of the Tribunal. Consequently, it follows that these two issues were rightly held by the Tribunal as not arising.

Issues 8 (i) and 8 (ii).—These two issues go to the root of the case and, therefore, would be taken up, last of all.

Issue No. 9.—The Tribunal has decided this issue in the negative. It has been given up by Mr. Kalia here. Therefore, it need not detain us.

Issues 10 (i), 10 (ii) and 10 (iii).—The Tribunal has decided Issues 10 (i) and 10 (ii) in the negative and held accordingly that Issue No. 10 (iii) does not arise. Since these issues have been given up by Mr. Kalia here, no further comments are necessary.

Issue No. 11.—This will be considered along with Issue No. 8 in due course.

Issue No. 12 (i) and 12 (ii).—The Tribunal has found that the petitioner had failed to prove that there had been an unauthorised change of polling stations. Consequently, Issue 12 (i) was decided in the negative. Accordingly, Issue No. 12 (ii) was held as not arising. Mr. Kalia has taken me through the relevant evidence. I agree with the view of the Tribunal that the Presiding Officer of Bambira polling station was the proper person to explain what actually happened but he was not produced. Suresh Kumar, Election Clerk (P.W. 6) has pointed out that Sungri is a part of Jonli and the Dak Bungalow was situated at Sungri. According to Dr. Parmar, Ghanshi is a part of Katari and similarly Sarog is a part of Siasu. In this state of the evidence, I am not inclined to disturb the finding of the Tribunal, on issue No. 12 (i). That being so, the Tribunal rightly held that Issue 12 (ii) did not arise.

Issues 13 (i) and 13 (ii).—These have been decided in the negative by the Tribunal. Mr. Kalia has given up these issues here. Consequently, we are no longer concerned with them.

Issue No. 14.—The Tribunal has found that the practice of placing the Parliamentary booths in the front and the territorial Council booths in the rear did not create any confusion, because this practice was adhered to all over Himachal Pradesh. Further, the petitioner failed to prove that any ballot papers for Parliamentary constituency had been lost. Again, the ballot papers found in the box, bearing the symbol of Shri Bushahri were actually credited to him. Under these circumstances, I agree with the Tribunal that the burden of proving this issue was not discharged by the petitioner. Accordingly, the finding of the Tribunal must stand.

Issues No. 15 (i) and 15 (ii).—I agree with the Tribunal that the recovery of a stone, from the ballot box, does not necessarily warrant the inference that it had been tampered with. I, therefore, hold that Issue No. 15 (i) was rightly decided in the negative. As a logical corollary, it follows that Issue No. 15 (ii) did not arise.

Issues No. 16 (i) and 16 (ii).—The case of the petitioner-respondent was that the appellant, Dr. Parmar, had spent very much more than the amount prescribed by rule 135, read with S. 77 of the Act, i.e., Rs. 15,000. He pointed out that there were as many as 606 polling stations, spread over an area of nearly 6,000 sq. miles. Camps were organized at all polling stations. Workers had to be paid and fed. In addition, the Maharaja of Patiala, as well as Ministers of the Union and State, were invited to tour the constituency. Further, the appellant had himself to tour the entire constituency during the course of his election campaign. Accordingly to the return submitted by Dr. Parmar, however, the total amount spent by him, over his election came to only Rs. 2,801-5-6, *vide copy Ex. 7*. Learned counsel for respondent No. 1 contended, vehemently, that the account was incorrect and many items had been omitted therefrom, in order to conceal the true state of affairs. The case of the appellant, on the other hand, was that the Ministers and the Maharaja of Patiala had been invited by the Congress Party and, therefore, the appellant (Dr. Parmar) did not spend anything over their visits. As regards polling agents and polling camps, he maintained that nothing was spent over them, as most of the polling agents were Congress workers and their needs were few. Mr. Kalia, for the petitioner-respondent, submitted that even if the polling agents were Congress workers, they had to be provided with food and refreshments as well as travelling allowance for proceeding to their respective polling

stations. Similarly, he maintained that the polling camps, even in the simplest form must have cost some money. The accounts submitted by Dr. Parmar are silent regarding these items. In holding that nothing was spent by Dr. Parmar on his camps, the Tribunal has relied upon statements made by the petitioner's witnesses to the effect that the P.S.P. camps at various polling camps had cost nothing. This, in my opinion, was not sound reasoning. The appellant, undoubtedly, must have spent some money on his polling agents and polling camps. In *Ghasi Ram v. Ram Singh* and others, 4 Election Law Reports 124, the Election Tribunal, Patiala, held that:—

"The maximum scales of election expenses, prescribed by S. 77 of the Representation of the People Act, 1951, read with rules 117 and 118, cover all kinds of expenses in the entire process of election from the commencement of the election period and not only the expenses, which are incurred from the time the polls commence."

Similarly, in *Vasantha Pai v. Dr. V. K. John* and others, 12 Election Law Reports 107, the Election Tribunal, Madras, indicated that:—

"Free services rendered by friends of a candidate, e.g., free advertisements in a newspaper, free printing of manifestos, free re-printing of electoral rolls, making of books etc., which have a cash value, must be included in the return of election expenses."

On these premises, I was requested by Mr. Kalra to hold that Dr. Parmar must have spent very much more than Rs. 15,000/- permissible under the rules. Learned counsel for the appellant, on the other hand, pointed out that under section 77 of the Act, expenditure means expenses incurred by a candidate, or authorized by him or by his election agent. Under section 123(6) of the Act, it is corrupt practice to incur or authorize expenditure in contravention of S. 77. The burden of proving that the appellant (Dr. Parmar) had incurred or authorized expenditure in excess of Rs. 15,000/- obviously, lay upon the petitioner-respondent (Shri Hira Singh Pal). The Tribunal which had the advantage of hearing the witnesses and noting their demeanour, was not convinced by the testimony of the petitioner's witnesses to the effect that the appellant must have spent about Rs. 40 to Rs. 60 on each camp. Sitting as a Court of Appeal, I find it difficult to take a different view. Even if we assume that the account, Ex. 7, does not disclose the true state of affairs, still there is no cogent and convincing evidence on record which would justify our arriving at the affirmative conclusion that Dr. Parmar spent more than Rs. 15,000. The result is that, apart from surmises, there is no ground for reversing the finding of the Tribunal on Issue No. 16(i). Accordingly, it follows that Issue No. 16(ii) does not arise.

Issues 8 (i) and (ii), 11 and 17 (i) and (ii).—These issues go to the root of the case. They formed the subject matter of prolonged and elaborate arguments on either side, lasting four days. These issues involve questions of fact and law. I shall deal with the arguments, advanced before me *seriatim*:—

(a) In the first place, learned counsel for the appellant urged that para 4(c) of the petition was defective and did not conform to the requirements of S. 83(1)(b) of the Act, i.e. it does not furnish full particulars of the times and places at which the assistance of Government servants was procured and the names of such Government servants. He invited my attention to para 16 of the preliminary objections, filed by the appellant, before the Tribunal on 14-1-1958. The objections were gone into by the Tribunal the same day, which held that para 4 of the petition was substantially in order. A few clauses and some parts of a few other clauses, were ordered to be deleted. Mr. Misra, for the appellant urged, vehemently, that para 4(c)(i) of the petition was inconsistent with the opening portion of para 4(c) and, consequently, the Tribunal misdirected itself during the trial. He urged that under section 123(7) of the Act the essence of the corrupt practice lay in obtaining or procuring or abetting or attempting to obtain or procure, by a candidate or his agent, or by any other person, any assistance from a Government servant, for the furtherance of the candidate's election prospects. Mr. Misra urged that Issue No. 8 (both parts) do not refer to "obtaining" or "procuring" the assistance of Amar Singh, a member of the Armed Forces of the Union, and, consequently, there has been no proper trial on the charge of the alleged corrupt practice. Mr. Misra further argued that S. 123(7) contemplates that the candidate or his agent should *actively* obtain or procure the assistance of a Government servant, before a corrupt practice could be established. Reliance was placed by him on First Appeal 83 of 1958 *Moti Lal Vs. Mangala Prasad* etc. decided by the Allahabad High Court on 16-5-1958 (a certified copy being produced in this Court), wherein a Division Bench of that High Court remarked that:

"We think that the word 'obtain' in section 123(7) has been used, in the sense of the meaning which connotes 'purpose' or 'effort' behind the action of the candidate. The word has not been used in the sub-section in the sense of a mere passive receipt of assistance, without the candidate being even conscious

of the fact that the assistance has been rendered. In order to bring the case under sub-section (7), it must be shown that the candidate did some effort or performed some purposeful act, in order to get the assistance. The receipt of assistance must be the result of either purpose of effort, which implies that the getting of the assistance, should be the result of some conscious action of the candidate and not a mere passive happening of his getting the assistance. It further appears to be unreasonable to impute to the Legislature an intention that the election of a candidate should be declared to be void, even though the candidate had no knowledge even of the fact that some person in the service of Government had taken into his head to assist a particular candidate."

Learned counsel for the respondent, on the other hand, pointed out that issues had been framed by the Tribunal in the presence of the appellant and his counsel, but no objection was raised by them as to the wording of Issue No. 8. Further, Mr. Kalia submitted—and in my opinion with great justification—that it was no body's case that Amar Singh had thrust his services upon the appellant forcibly. The appellant's contention, *vide* para 4(c)(1) of his written statement was that "*Amar Singh was not his polling agent either in law or in fact*", a contention, which has been repeated, in ground No. 3 of the Grounds of Appeal to this Court. The point for determination before the Tribunal was whether Amar Singh had canvassed for the appellant in villages Sheopur, Kanuwala and Haripur and had also been appointed polling agent of the appellant at Sheopur No. 13 on 25-5-1957. In the absence of an allegation to the effect that Amar Singh had forcibly thrust his services upon the appellant, it follows that no question of Amar Singh canvassing for the appellant or working as his polling agent could arise, *unless his assistance had been obtained or procured*. In my opinion, therefore, it is nothing short of hair-splitting to urge now that Issue No. 8(i) and (ii) were defective, because they do not speak specifically of obtaining or procuring of Amar Singh's assistance. As I shall show subsequently, while dealing with facts, under this issue, the Allahabad ruling, cited by Mr. Misra, has no application to the facts of the present case.

(b) It should be borne in mind that in his preliminary objections dated 14-1-1958, the appellant desired that the Tribunal should strike out the entire para 4 of the petition, consisting of the sub-paras (a) to (h). It is significant that these were the grounds on which the election of the appellant was challenged. A reply to these preliminary objections was filed by the petitioner (Shri H. S. Pal) on the same day (14-1-1958). The learned Tribunal, in the course of its order dated 14-1-1958, referred to the provisions of S. 83 of the Act as well as the ruling of the Supreme Court, reported in A.I.R. 1957 Supreme Court 444. It then proceeded to examine the various parts of para 4 of the petition and came to the conclusion that the entire para, with its various sub-paras, could not be struck out in toto, as desired by the appellant. It, however, directed that certain clauses and passages be deleted. It further permitted the petitioner to amend the verification of the petition. I have examined the order of the Tribunal, on the preliminary objections, in the light of the submissions made by the learned counsel for the appellant. I see no reason, however, to hold that the order on the preliminary objections was not in conformity with the provisions of the Act. The order of the Tribunal does not, in my opinion, offend the provisions of section 83 of the Act, read with Sec. 90(5).

(c) Coming to facts, learned counsel for the appellant urged that the Tribunal has erred in holding that Amar Singh had worked and canvassed for the appellant in villages Sheopur, Kanuwala and Haripur. Mr. Misra contended, firstly, that the evidence produced by the petitioner, in this behalf, was unworthy of credit and, secondly, that there was no evidence to show that the appellant has approved of Amar Singh's canvassing for him in those villages. To prove Issue No. 8(i), the petitioner had produced the following ten witnesses: Tara Singh (P.W. 15) of village Bral, P.S. Paonta, deposed that Amar Singh was known to him and during the last general elections, he went from village to village canvassing for Dr. Parmar and Shri Kalyan Singh (the latter being a candidate in the Territorial Council elections). Learned counsel for the appellant submitted that Tara Singh's statement was of a vague and general character and it should not have been accepted, especially as his testimony in other matters, e.g. the purport of the speech of the Maharaja of Patiala at Paonta had not been relied upon. Arjun Singh (P.W. 17) of Paonta stated that Amar Singh used to work for Dr. Parmar on the eve of the election. According to the witness, Amar Singh came to his house as well as his shop. Amar Singh also visited the Bazaar and the Congress office at Paonta. In cross-examination, this witness admitted that he had no correspondence with Amar Singh, although he claimed that his (Arjun Singh's) sister was married to Amar Singh's brother, Banta Singh. Apart from a general statement to the effect that Amar Singh worked for Dr. Parmar, this witness does not disclose in which particular manner, Amar Singh canvassed for Dr. Parmar.

Mehar Singh (P.W. 4) and Man Singh (P.W. 5), both of Sheopur, deposed that Amar Singh had acted as the polling agent of Dr. Parmar as Sheopur polling station on the date of poll. According to Mehar Singh Amar Singh was wearing the symbol of a pair of bullocks on his sleeve. These witnesses have said nothing about the alleged canvassing

by Amar Singh on behalf of Dr. Parmar. Lachman Das (P.W. 18) and Nariana (P.W. 21), both of village Kanuwala, have stated that on the eve of poll, Amar Singh canvassed support for the Congress party. According to the former, Amar Singh met him at a workshop and told him that he should cast his vote for the Congress and Dr. Parmar. According to the latter, Amar Singh came to his shop, where a few other persons were sitting and told all of them they should place their votes in the ballot boxes bearing the symbol of a pair of bullocks. Coming to village Haripur, Darshan Singh (P.W. 10) deposed before the Tribunal that 4 or 5 days before the date of poll, Amar Singh came to village Haripur and canvassed support for Dr. Parmar at the house of one Pyara Singh. Nirmal Singh (P.W. 12) and Onkar Singh (P.W. 14), also of village Haripur, made a similar statement. Jagat Singh (P.W. 13) merely stated that Amar Singh had canvassed for Dr. Parmar in village Haripur, although he made no reference to the meeting at Pyara Singh's house.

Mr. Misra pointed out that Pyara Singh, although summoned by the petitioner, as a witness and who actually had come to Court, was not produced. He further submitted that no reliance should be placed on the testimony of above witnesses, because in other matters, e.g. the purport of the speeches delivered by the Maharaja of Patiala and Sardar Kairon, they have not been relied upon. The Tribunal has remarked that the appellant, Dr. Parmar, had not cared to examine his field workers of villages of Sheopur, Kanuwala and Haripur and in their absence, there could be no effective denial to the testimony made by the 10 witnesses referred to above. The Tribunal further remarked that the testimony of these witnesses was in conformity with other circumstances of the case, e.g. the appointment of Amar Singh as a polling agent at Sheopur polling station No. 13. The Tribunal has further pointed out that Amar Singh withdrew from the polling station as soon as somebody pointed out that, as a Government servant, it was not proper for him to act as a polling agent. It has also remarked that no action was taken against Amar Singh for having worked as a polling agent by Shri Kalyan Singh "the main worker for Dr. Parmar and himself a candidate for the Territorial Council," when he reached Sheopur polling station, shortly afterwards.

In my opinion, however, the circumstances pointed out by the Tribunal are not conclusive. The mere fact that Amar Singh was appointed as a polling agent on the polling day would not necessarily corroborate the allegation that he had canvassed support for Dr. Parmar in the three villages, mentioned earlier. Similarly, his retirement from the polling station, as soon as objection was taken to his working there, and the failure on the part of Shri Kalyan Singh to take action against him, also cannot, in my opinion, corroborate the statements of the petitioner's witnesses as to the alleged canvassing. What action could Shri Kalyan Singh take except to advise him to leave the spot?

On a careful examination of the oral evidence tendered by the petitioner in support of Issue No. 8 (i), I am of the opinion that the alleged canvassing by Amar Singh in villages Sheopur, Kanuwala and Haripur has not been established satisfactorily. I would, therefore, reverse the finding of the Tribunal on this issue (*Issue No. 8 (i) only*). In view of this, the question as to whether Dr. Parmar had approved of Amar Singh's canvassing on his behalf in those villages does not arise.

Issue No. 8 (ii).—This is the crucial issue and for reasons to be stated shortly. I have come to the conclusion that the Tribunal was perfectly right in deciding this issue in favour of the petitioner. Let us take the facts first. From the statements of Shri Bhanu Pratap (P.W. 7) and Shri Prem Singh (P.W. 11), who worked as Presiding Officer and Polling Officer, respectively, at Sheopur polling station No. 13 on 25-5-1957, it is proved, beyond all dispute, that Amar Singh, admittedly, a member of the Armed Forces of the Union, appeared that morning before the Presiding Officer with Form No. 10 (Appointment of Polling Agent) duly signed by Dr. Parmar (Ex. 4). Amar Singh signed that from twice in the presence of the Presiding Officer firstly under the sentence "agree to act as such polling agent" and again under "declaration of polling agent to be signed before Presiding Officer". "I hereby declare that at the above election, I will not do anything forbidden by S. 128 of the Representation of the People Act, 1951, which I have read/has been read over to me." After that, the Presiding Officer, Shri Bhanu Pratap, signed the form at the place marked "Presiding Officer" and inserted the date '25/5'. After some time, some body pointed out to the Presiding Officer that Amar Singh was a member of the Armed Forces on leave and, therefore, could not work as a polling agent. The Presiding Officer told the objectors that he had no power to send Amar Singh away. Amar Singh, however, surrendered the polling agent badge and left the place of his own accord. Prem Singh (P.W. 11), who worked as Polling Officer at that polling station on that day, has added that he happened to come out the polling booth on one or two occasions and saw Amar Singh sitting in the Congress camp.

Those are the undisputed facts of the case. As the risk of repetition, I must point out that although in para 4(c)(i) of his written statement, as well as in ground 3 of the Grounds of Appeal to this Court, the position taken by Dr. Parmar was that "Amar Singh was not his polling agent either in law or in fact." During the course of arguments in this

Court, learned counsel for the appellant conceded, that the validity of Amar Singh's appointment, as polling agent could not be questioned, although, according to him, under the circumstances of the case, it would not amount to a corrupt practice, as contemplated by section 123(7) of the Act. My attention was drawn to *Satya Dev Bushahri v. Padam Dev and others*, A.I.R. 1954 Supreme Court 587, wherein their Lordships of the Supreme Court observed that:

"There is nothing in the Act or in the Rules, barring the appointment of a Government servant as a polling agent. Such an appointment does not *per se* contravene S. 123(8). Nor is there anything in the nature of the duties of a polling agent, which necessarily brings him within the prohibition enacted in that section. The duty of a polling agent is merely to identify the voter, and that could not, by itself and without more, be said to further the election prospects of the candidate. So long as the polling agent confines himself to his work, as such agent of merely identifying the voters, it cannot be said that S. 123(8) has, in any manner, been infringed."

Learned counsel for the respondent, on the other hand, rightly point out that this decision was given before the Representation of the People Act, 1951, was amended by Act 27 of 1956. As a result of the amendment S. 123 has been materially changed. S. 123(7) of the amended Act has taken the place of S. 123(8) of the old Act, i.e. before amendment. Two new explanations have also been added by the Amending Act. The second Explanation runs as follows:—

"For the purpose of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election, if he acts as an election agent, or a polling agent or a counting agent of that candidate."

Thus, if a Government servant has been appointed to act as a polling agent of a candidate and functions in that capacity, he shall be deemed to have assisted that candidate, in the furtherance of his election prospects, for the purpose of S.123(7) of the amended Act, without proof of more. In view of the amendment, therefore, the ruling reported in A.I.R. 1954 Supreme Court 587 will not help the appellant, in his attempt to show that the appointment of Amar Singh would not amount to a corrupt practice, as envisaged by S.123(7) of the Act.

(d) The polling agent appointment form, Ex. 4, was signed by Dr. Parmar on 28th April, 1957. According to him, in the sentence running "I, Yeswant Singh" and ending "polling station 13 at Sheopur" only the word "Yeswant Singh" is in his hand. The signature and the date "28-4-1957" were admitted. He denied having entered the name of 'Amar Singh' or the word "Sheopur No. 13" and again "Sheopur". His explanation was that there were 606 polling stations in his constituency which covered an area of about 5,000/- sq. miles. He contended that it was physically impossible for him to be present at all the polling stations on the date of poll and appoint polling agents, personally. Therefore, he signed several blank polling agent appointment forms, including Ex. 4, at Nahan on 28th April, 1957 and handed over the forms, including Ex. 4, to Shri Kalyan Singh (R.W. 9), who was President of the Simur District Congress Committee. Dr. Parmar contended that he had no intention of taking any assistance from any Government servant, including Amar Singh. He added that when he handed over the appointment forms to Shri Kalyan Singh, he made it clear that no Government servant was to be appointed as a polling agent and the blanks, (in the forms) should be filled in at the spot, (at the polling stations) in favour of any Congress worker, whose services, as polling agent would be available. Kalyan Singh (R.W. 9) deposed that he handed over these appointment forms including Ex. 4, to Shri Jugal Kishore (R.W. 8), Secretary, Tehsil Congress Committee, Panota after entering "13-Sheopur" in Ex. 4. According to him, a meeting of the Tehsil Congress workers was held on 23rd May, 1957 and in that meeting the names of the various workers, who were to function as incharge camps and polling agents, was finalised. Shri Kalyan Singh (R.W. 9) was also present at that meeting. On the following morning, i.e. 24th May, 1957, Shri Kalyan Singh handed over to Shri Jugal Kishore the polling agent appointments forms pertaining to Panota Tehsil, which had been signed by Dr. Y. S. Parmar on 28th April, 1957. One Kashmir Singh (R.W. 3) was chosen as camp incharge of Sheopur polling station. Six polling agent appointment forms were handed over by Jugal Kishore to Kashmir Singh, who left for Sheopur. Jugal Kishore has added that Kashmir Singh was told that no Government servant was to be appointed as polling agent. Kashmir Singh (R.W. 3) stated to the Tribunal that he reached Sheopur at 7-15 A.M. on 25th May, 1957. It had already been decided that four persons, namely, Shiv Nath, Gulab Singh, Kartar Chand and Sunder Singh, were to function as polling agents for Dr. Parmar at Sheopur. Shiv Nath was already there, Gulab Singh turned up shortly afterwards, but Kartar Chand and Sunder Singh failed to turn up by 8 A.M. The Presiding Officer pressed Kashmir Singh for submission of the polling agent appointment forms. In the absence of Kartar Chand and Sunder Singh, Kashmir Singh, allegedly, requested one Kabil Singh of village Sheopur to act as the third polling agent, but he declined to do so. He, however,

suggested that Amar Singh, who was with him, could be appointed as the third polling agent. Thereupon, at the request of Kashmir Singh, one Parhlad Singh, who had accompanied Kashmir Singh from Paonta to Sheopur to read the Hindi electoral list, filled in the name of Amar Singh in Ex. 4. Amar Singh then took the form inside the polling station for presentation to the Presiding Officer. Kashmir Singh contended that he was not aware that Amar Singh was a Government servant.

This was the appellant's version as to how Amar Singh came to function as polling agent. The Tribunal was, however, not convinced that such actually was the case. It has pointed out that these facts have not been pleaded in the written statement of Dr. Parmar. The Tribunal was not prepared to believe that a list of polling agent had been finalized two days earlier, as alleged by Shri Kalyan Singh, or the authority of the camp incharge, to fill in the blanks of Ex. 4 was restricted. In its opinion, a general authority had been given to the camp incharge to use his own discretion and fill in the names of the polling agents in the forms already signed by Dr. Parmar, according to his discretion at the spot. The Tribunal has observed that it was physically impossible for the appellant to be present personally at each of the 606 polling stations and personally supervise the appointment of the polling agents. At the same time, in its opinion, the legality of the appointment of Amar Singh as polling agent could not be questioned, although Dr. Parmar was not personally present when Amar Singh's name was entered in Ex. 4—because that was done in pursuance of his general instructions and the authority conferred by him upon Kalyan Singh and Kashmira Singh.

As I said earlier, although Dr. Parmar took up the position at the trial and in the Grounds of Appeal to this Court, that Amar Singh had not been appointed, as his polling agent either in law or in fact, nevertheless, during arguments, it was conceded by Mr. Misra for the appellant, that the factum of the appointment of Amar Singh, as polling agent could not be questioned although he maintained that the appointment was made under such peculiar circumstances, that it would not amount to a corrupt practice as contemplated by S. 123(7). This last contention will be gone into while discussing Issue No. 11. Suffice it to say that on Issue No. 8(ii), I concur with the finding of the Tribunal to the effect that Amar Singh, a member of the Armed Forces of the Union, must be deemed to have been appointed as polling agent, by the appellant, at polling station Sheopur No. 13, on 23rd May, 1957.

Issue No. 11.—This issue follows as a logical corollary to my finding on Issue No. 8(ii), which is the same as that of the Tribunal. Before the Tribunal, doubt was expressed, by the appellant, as to whether Amar Singh would have the status of a member of the Armed Forces of the Union, in view of the allegation that he was working as an office orderly. The finding of the Tribunal is that Amar Singh was a soldier of Indian Army and as such had the status of a member of the Armed Forces. This finding has not been challenged during arguments here.

Mr. Misra, for the appellant, strenuously urged, however, that an election petition is a quasi criminal proceeding and in the absence of clear proof of *mens rea*, no penalty could be visited upon the appellant by reason of Amar Singh's appointment. He pointed out that in view of the finding of the Tribunal the appellant has been disqualified from membership of Parliament and of the Legislature of every State, for a period of six years under section 140 of the Act. He reiterated that the appellant had given clear instructions to RV. 9, Kalyan Singh, (to whom the signed appointment forms were entrusted), that no Government servant was to be appointed as a polling agent on the strength of those forms. He further submitted that the Constituency was spread over 5,000/- sq. miles, covering difficult hilly terrain, and split into 606 polling stations. He added that it was physically impossible for the appellant personally to supervise the appointment of each and every polling agent. He had, therefore, to rely upon his supporters and workers and could do no more than give them suitable instructions, as to how the signed appointment forms were to be utilised. He further urged that it was hardly likely that Dr. Parmar would have intentionally appointed a member of the Armed Forces as his polling agent or approve of such appointment and thereby invite trouble upon himself. Mr. Misra further submitted that since Dr. Parmar did not personally appoint Amar Singh as his polling agent or consent to the same and since, admittedly, he had appointed no election agent in this Election, the case would fall under section 100(1) (d)(ii) and not under section 100(1) (b) of the Act. He further contended that once it be held that the case fell under section 100(1) (d)(ii) then, it became incumbent upon the petitioner to prove, affirmatively, that the appointment of Amar Singh was made with the consent of the appellant. In this connection, he invited my attention to Explanation 1 to S. 123 of the Act, wherein the expression "agent" has been defined as "including an election agent, a polling agent and any person, who is held to have acted as an agent, in connection with the election with the consent of the candidate." Mr. Misra submitted that in the absence of proof of such consent, the Tribunal was not justified in setting aside the election of the appellant, by holding him guilty of a corrupt practice, envisaged by S. 123(7) of the Act.

Mr. Mishra cited the following authorities in support of his argument:—

(1) Mohd. Ibrahim v. Election Tribunal, Lucknow and others, A.I.R. 1957 Allahabad 292. There, in dealing with a writ petition, arising out of an election petition under the Representation of the People Act, 1951, prior to the amendment of 1956, Mootham, C. J., observed as follows:

"The policy of the law, embodied in S. 123, Clause (8) of the Act is, broadly, to keep Government servants aloof from politics and to prevent the machinery of Government being used in furtherance of a candidate's return."

"It is not every act, which is done by Government servant, at the instance of candidate or his agent which comes within the ambit of this clause, even though it may result in the furtherance of the former's election for, were that so, a candidate would be unable to utilize the services of 'the post office to deliver copies of his election address or the railway service to travel to a place' where he wants to make an election speech."

"What is being struck at by this clause is the furtherance of a candidate's election by the obtaining or procuring the assistance of a Government servant because the latter is a Government servant. The mere rendering of assistance to a candidate (at the latter's request), by a Government servant, even though that assistance furthers the election prospects of that candidate, does not necessarily fall within the mischief, which this clause is designed to prevent."

Learned counsel for the respondent rightly pointed out that this ruling will not help the appellant, in view of the new Explanation (2) to section 123 of the Representation of the People Act, added by the amending Act (Act No. 27 of 1956). In terms of this explanation, a person, who is appointed to act as a polling agent of the candidate, is deemed to assist in the furtherance of that candidate's election prospects. Consequently, no further proof is necessary.

(2) First Appeal 498 of 1957, Chatter Singh v. Kewal Singh and others, decided by the Allahabad High Court on 11th March, 1958 and published in the Uttar Pradesh Gazette of 22nd May, 1958. There, a Division Bench of that High Court remarked that:

"A reading of the relevant portion of the election petition and of the judgment shows that neither the petitioner in the election petition, nor the Election Tribunal has clearly kept in view the difference in the two grounds mentioned in section 100(1)(b) and section 100(1)(d)(ii) of the Act. Under section 100(1)(b) an election of a returned candidate is to be declared void, if it is proved that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent; whereas section 100(1)(d)(ii) says that if a corrupt practice has been committed, in the interests of a returned candidate, by a person other than that candidate or his election agent, or a person acting with the consent of such candidate or election agent, the election is to be declared void, only if, the result of the election, in so far as it concern the returned candidate, has been materially affected by the commission of the corrupt practice.

It would thus appear that the action of the returned candidate himself and of his election agent would be covered by section 100(1)(b), which would also include actions of other persons, if done with the consent of the returned candidate or his election agent. But if the said action is by other persons, without the consent of the returned candidate or his election agent, the case would fall under section 100(1)(d)(ii)."

This decision, in my opinion, has no application to the facts of the present case, because as will be shown presently, the case falls not under 100(1)(d)(ii), but under section 100(1)(b), of the Act.

(3) First Civil Appeal No. 73 of 1957, decided by the High Court at Allahabad (Lucknow Bench) on 3rd January, 1958 and reported in the Uttar Pradesh Gazette of 20th March, 1958. There, too, the Division Bench pointed out the difference between the scope of S. 100(1)(b) and section 100(1)(d)(ii), in the following terms:

"In considering the merits of the appeal, one important point that has to be kept in view is that, under section 100 of the Representation of the People Act, an election can be declared void on the ground of commission of a corrupt practice under two different circumstances. The first circumstance is when a corrupt practice has been committed by a returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or his election agent. In such cases, it is enough for the election

petitioner to establish that the corrupt practice had been committed. The other circumstance is when the corrupt practice has been committed in the interest of the returned candidate by a person other than candidate or his election agent or a person acting with the consent of such a candidate or election agent. In such a case, section 100 of the Representation of the People Act requires that, in addition to the proof of the commission of the corrupt practice, the election petition must also allege and establish that the result of the election has been materially affected by the commission of that corrupt practice."

I shall show presently, as indicated earlier, that the present case falls under section 100(1)(b), i.e., since the election law will treat the appointment of Amar Singh, as polling agent, as having been made by the appellant personally, and *not* under section 100(1)(d)(ii). Consequently, the question of the consent of the candidate to the commission of the corrupt practice or of the result of election having been materially affected does not arise.

(4) A.I.R. 1954 Supreme Court 587. Earlier, I have pointed out that in view of the insertion of the new Explanation (2) to S. 123 of the Act, by the amending Act No. 27 of 1956, where a member of the Armed Forces or any one out of the various 'prohibited' categories, detailed in S. 123(7) is appointed as polling agent, no further proof is necessary and the Court must assume that such appointment was made to further the prospects of candidate's election. This ruling, therefore, will not help the appellant.

As against this, learned counsel for the respondent pointed out the following highly significant facts, which have also been dealt with by the Tribunal:—

- (i) Amar Singh, undoubtedly, was a member of the Armed Forces, as defined in S. 123(7)(c) of the Act. (ii) He did function, as polling agent of the appellant, at Sheopur polling station No. 13 on 25-5-1957 on the strength of the appointment form, Ex. 4. It is immaterial, if he retired after a few hours. (iii) Under Section 46 of the Act, a polling agent may be appointed only by a contesting candidate or his election agent. Admittedly, the appellant had no election agent. Therefore, only the appellant could have appointed polling agents. (iv) Amar Singh functioned as polling agent at Sheopur No. 13 on 25-5-1957, on the strength of the appointment form, Ex. 4. This, admittedly, was signed and dated by the appellant. It is immaterial if the name of Amar Singh was not entered in the form before the appellant signed it. The election law (as contained in the Representation of the People Act, 1951, as amended) does not contemplate the delegation of powers, under section 46, by the contesting candidate to anybody, other than his election agent. Since, admittedly, Dr. Parmar had no election agent, in the eye of the election law, he and he alone could have appointed Amar Singh as his polling agent. Under these circumstances, it is immaterial if Dr. Parmar handed over the appointment form to Shri Kalyan Singh with instructions that the name of no one, from the prohibited categories, *vide* S. 123(7), should be inserted in the blank spaces of the appointment forms and be permitted, accordingly, to function as polling agent. (v) The rigour of the election law would be no ground for disregarding it. The mere fact that there were 606 polling stations spread over a wide area would not exonerate the appellant, of statutory liabilities, if, as a result of the arrangements made by him, (such arrangements not being contemplated by the election law), persons from the prohibited categories, came to be appointed as polling agents. (vi) Under these circumstances, the common law notions of relations between principal and agent could not be dragged into this case and the appellant cannot escape liability on the ground that his agent had exceeded or disobeyed his instructions.

Mr. Kalia, for the respondent cited the following in support of his contentions:—(A) 'Hand-Book for candidates for election to the House of the People and the Legislative Assemblies issued by the Election Commission, 1957 Paragraph 32, thereof, runs as follows:—

"It will be physically impossible for you or your election agent to be present during poll at every polling station in your constituency. Some one should, therefore, be present to watch your interests at every polling station. Law permits you to appoint one polling agent and two relief agents at each polling station. They are all known as polling agents. Your election agent may also make any of these appointments on your behalf. Only one of your three polling agents for a polling station is, however, entitled to be present at a time inside the polling station, but they can relieve each other from time to time."

While paragraph 36 is to the following effect:—

"Take all precautions that there may be no overlapping and that conflicting appointments may not be made by you and your election agent in respect of the same polling station."

(B) Instructions for Polling Agents issued by the Election Commission, India, in 1957. Instructions 3 and 4 run as follows:—

"Every candidate can appoint one polling agent and two relief agents. Only one of them can, however, enter the polling station at a time. One of the relief agents should take the place of the polling agent whenever he goes out. Whichever of them is inside the polling station is treated as the polling agent of the candidate for the time being and has the same rights and responsibilities, given to the polling agent by law."

"The candidate or his election agent appoints you by a letter of appointment. You should formally accept your appointment by signing the letter of appointment. If possible, sign it in the presence of the candidate or his election agent. Do not forget to bring your appointment letter with you to the polling station on the day of the poll."

(C) Halsbury's Laws of England, Volume 14, Third Edition. At para. 300 (page 169), the learned author, while referring to liability of candidates says:

"A candidate's liability to have his election avoided, under the doctrines of election agency is distinct from, and wider than, his liability under the criminal or civil law of agency. Once the agency is established, a candidate is liable to have his election avoided for corrupt or illegal practices committed by his agents, even though the act was not authorized by the candidate or was expressly forbidden. The reason for this stringent law is that candidates put forward agents to act for them; and if it were permitted, that these agents should play foul, and that the candidate should have all the benefit of their foul play, without being responsible for it in the way of losing his seat, great mischief would arise."

(D) Jagan Nath v. Jaswant Singh and others, A.I.R. 1954 Supreme Court 210 (9 E.L.R. 231). Therein, their Lordships of the Supreme Court were pleased to observe that:—

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity, but is a purely statutory proceeding, unknown to the common law and that the court possesses not common law power."

Mr. Kalia pointed out that as a result of the amending Act 27 of 1956, section 79(a) of the unamended Act, wherein the expression 'agent' was defined has been deleted in the amended Act and instead an Explanation [Explanation (1) to S. 123] has been inserted, whereby an agent is defined as "including an election agent, a polling agent and any person, who is held to have acted as an agent, in connection with the election, with the consent of the candidate." Then comes Explanation (2), which has already been referred to more than once. Further under section 123(8) of the unamended Act, it was necessary to prove, before a corrupt practice could be established, that a candidate or his agent or any other person, with the connivance of a candidate or his agent, obtained or procured the assistance of a Government servant, for the furtherance of the prospects of the candidate's election. In view of the insertion of the new Explanation (2) to S. 123 by the amending Act, the necessity of proving connivance has been done away with, where a government servant is appointed as a polling agent. In other words, the question of *mens rea* does not arise, here, in the present case.

(E) First Appeal No. 24 of 1958, decided by the Punjab High Court on 13-5-1958. There, the facts were that one Puran Singh, a member of the Armed Forces, had been appointed as polling agent by one Shri Baru Ram, who was declared elected to the Punjab Legislative Assembly. Baru Ram denied having signed the relevant appointment form in favour of Puran Singh. On facts, the Division Bench found that the appointment form had been signed by Baru Ram, despite his denial. Under these circumstances, the Division Bench maintained the order of the Election Tribunal, declaring Baru Ram's election as void.

Obviously the arrangements made by the appellant, for the appointment of his polling agents, were in contravention of the mandatory provisions of S. 46 of the Act. These provisions cannot be circumvented by a reference to physical factors like distances, large number of polling stations, lack of communications, etc. Courts have to administer the law as it stands. If it be found that the existing law causes undue hardship, then it would be a matter for the Legislature to consider amending legislation. Since the appellant, in appointing his polling agents, adopted a procedure, which is not only, not recognized by the law, but also prohibited by it (*see* S. 46), then if as a result thereof, something goes wrong, it would not be open to the appellant to turn round and ask the Court to exonerate him, on the ground that the persons, to whom the duty had been delegated, had exceeded his instructions, or failed to comply with them. As far as the Courts are concerned, they will hold the appellant, solely responsible for the appointment of Amar

Singh, as his polling agent. It is not a question of an agent exceeding his instructions, because, in the absence of an election agent, the duty could not have been delegated by the appellant to anybody else. There is no suggestion that the form was forcibly taken away by Amar Singh from the custody of the appellant's supporters and he filled in his name, signed it and presented it to the Presiding Officer. When a candidate enters the arena of election contest, he must submit to the provisions of the election law however harsh and stringent they may be. If the election law requires him to do anything *personally*, but he chooses to delegate that function to somebody else and, consequently, trouble ensues, the law will hold the candidate personally responsible.

In view of all that has been said above, I agree with the finding of the learned Tribunal that the responsibility for appointing Amar Singh, a member of the Armed Forces, as polling agent at Sheopur No. 13 on 25-5-1957, rests, firmly and squarely, on the shoulders of the appellant, and he cannot avoid it.

Issue No. 17 (i) and 17 (ii).—In view of my findings on Issues 8 (ii) and 11, Issues 17 (i) and (ii) do not arise.

Issue No. 18.—In view of my findings on Issues 8 (ii) and 11, it follows that the learned Tribunal was justified in declaring the appellant's election, as void under section 98 (b), read with S. 100 (1) (b) and S. 123 (7) (c) of the Act. The appeal, accordingly, fails.

ORDER

I dismiss the appeal with costs, assessed at Rs. 500/- (Rupees five hundred), payable to respondent No. 1, Shri Hira Singh Pal. Appellant to bear his own costs.

(Sd.) T. RAMABHADRAN,
Judicial Commissioner.

The 31st July, 1958.

IN THE COURT OF THE HON'BLE JUDICIAL COMMISSIONER, HIMACHAL PRADESH

No. J.C. Misc. F.A. 2/58

Simla, the 31st July, 1958.

In the matter of Miscellaneous First Appeal No. 2 of 1958.
(From the Judgment and Order, dated the 28th April, 1958, of Election Tribunal, Nahan, Himachal Pradesh, in Election Petition No. 479 of 1957.)

Dr. Yashwant Singh Parmar, resident of White Gate, Simla—*Appellant*
(original respondent No. 1).

Versus

1. Shri Hira Singh Pal, son of Shri Parshotam Das Pal, Rajput, Village Demehar, Tehsil Arki, District Mahasu—*Respondent*

(Election Petitioner).

2. Election Commission of India, through the Secretary, 1, Aurangzeb Road, New Delhi—*Respondent*.

AND

CIVIL MISCELLANEOUS PETITION No. 26 OF 1958
[Petition for stay under Section 116A (4) of the Representation of People Act 1951.]

Dated the 31st July, 1958

BEFORE THE HON'BLE MR. T. RAMABHADRAN, JUDICIAL COMMISSIONER.

For the Appellant.—Sarvasri K. L. Misra, S. S. Shukla, J. K. Srivastava, M. G. Poddar and M. L. Aukta, Advocates.

For respondent No. 1.—Sarvasri M. L. Kalia and Ishwar Chander, Advocates.

The Appeal above-mentioned having been called for final hearing on the 18th day of July, 1958 upon hearing counsel for the appellant and counsel for respondent No. 1.

the Court took time to consider its Judgment and the said appeal being called on for Judgment before this Court on the 31st day of July 1958 this Court Doth Order:

- (1) That the appeal be and the same is hereby dismissed;
- (2) That the Judgment and Order of the Election Tribunal, Himachal Pradesh, dated the 28th April, 1958, declaring the election of Dr. Y. S. Parmar, as a member of House of People, from the General Seat of double member Mahasu Constituency, as void under Section 98(b), read with Section 100(1)(b) and Section 123(7)(c) of the Representation of the People Act, 1951, and fixing the amount of costs of the election petition payable by Shri Y. S. Parmar to Shri Hira Singh Pal, at Rs. 700/-, be and the same is hereby maintained;
- (3) That the appellant do herein pay Rs. 500/- as costs of this appeal (as assessed by the Hon'ble Court) to respondent No. 1, Shri Hira Singh Pal;
- (4) That the interim stay, pending the decision of this appeal, granted by this Court on the 23rd May, 1958, be and the same is hereby *vacated*. And this Court further Order that this Order be punctually observed and carried into execution by all concerned.

Witness the Hon'ble Mr. T. Ramabhadran, Judicial Commissioner, Himachal Pradesh, dated the 31st July, 1958.

(Sd.) H. L. SONI, Registrar,
Judicial Commissioner's Court,
Himachal Pradesh,
"Harvington", Simla-1.

[No. 82/479/57/410]

By Order,

A. N. SEN, Under Secy.

ERRATUM

In Election Commission, India notification No. 570/58(7), dated the 20th August 1958, published under S.O. 1725 in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 20th August 1958 the following correction is to be made:—

In the third line of declaration No. (4) (*viz.*, Election to Delhi Electoral College from No. 6 Lodi Colony Constituency), for "1957" read "57"